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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 BEVERLY OAKS PHYSICIANS)
13 SURGICAL CENTER, LLC, A)
14 California Limited)
15 Liability Company)

16 Plaintiff,)

17 v.)

18 BLUE CROSS BLUE SHIELD OF)
19 ILLINOIS; and Does 1)
20 through 100;)

21 Defendants.)

CV 18-3866-RSWL-JPR

ORDER re: Defendant's
Motion to Dismiss
Plaintiff's FAC [19]

22 Currently before the Court is Defendant Blue Cross
23 Blue Shield of Illinois' ("Defendant") Motion to
24 Dismiss Plaintiff's First Amended Complaint [19]
25 ("Motion"). Having reviewed all papers submitted
26 pertaining to this Motion, the Court **NOW FINDS AND**
27 **RULES AS FOLLOWS:** the Court **GRANTS** Defendant's Motion.
28

I. BACKGROUND

A. Factual Background

Plaintiff Beverly Oaks Physicians Surgical Center ("Plaintiff") is an ambulatory surgery center located in Sherman Oaks, California. First Am. Compl. ("FAC") ¶ 4, ECF No. 18. Defendant Blue Cross Blue Shield of Illinois ("Defendant") is a managed care company that, among other things, insures and/or administers employer health plans typically governed by ERISA. Id. ¶ 6. Defendant carries out its health insurance business activities in each state where covered employees and their dependents are located. Id. ¶ 8. Plaintiff brings this Action as the purported assignee of patients seeking recovery of ERISA benefits they allege Defendant owes them. Id. ¶ 56.

Plaintiff provided surgery center facility services to fourteen patients enrolled in health plans governed by ERISA. Id. ¶¶ 10, 15-16; id., Ex. F, ECF No. 18-6. Plaintiff alleges that each of these patients assigned his or her health benefits to Plaintiff and that Plaintiff submitted 27 claims to Defendant for the medical services provided to these patients. Id. ¶¶ 21, 46; id., Ex F. Plaintiff attached to its FAC a copy of its assignment agreement it sends to its patients. Id. ¶ 21; id., Ex. D., Financial Responsibility Agreement, ECF No. 18-4. Plaintiff alleges that Defendant failed to pay Plaintiff's full billed charges, and that as an assignee of these

1 benefits, it is entitled to recover additional payments
2 from Defendant. Id. ¶ 56

3 Plaintiff is an "out-of-network" provider for each
4 claim at issue and does not have a contract with
5 Defendant. Id. ¶ 39. Plaintiff's custom was to
6 contact a Defendant representative by telephone to
7 discuss the proposed surgery in advance, and the
8 representative would advise Plaintiff whether the
9 surgery would be covered under that patient's plan.
10 Id. Plaintiff alleges that at no time during any of
11 these communications did Defendant indicate it would
12 assert an "anti-assignment clause" in any ERISA Plan as
13 a basis to bar payment. Id. ¶ 41. Plaintiff also
14 alleges that neither did Defendant assert an anti-
15 assignment clause during the administrative review
16 phase, in which Defendant provided Explanations of
17 Benefits ("EOBs") to Plaintiff to explain the
18 underpayments or non-payments with respect to the
19 claims submitted. Id. ¶¶ 47-48.

20 1. Teamsters Plan

21 Plaintiff has identified 11 patients¹—bringing 18
22 of the total claims in issue—as insured pursuant to the
23 Teamsters Western Region & Local 177 Health Care Plan
24 (the "Teamsters Plan"). FAC ¶ 14, 22. Plaintiff
25 alleges that the Teamsters Plan was not available for
26 its review prior to performing its services for Plan

27
28 ¹ Patients A, B, C, D, F, G, H, I, J, L, and N are all
covered under the Teamsters Plan. FAC ¶ 22.

1 members. Id. ¶ 14. Where plan documents may be
2 publicly available, the documents open for review are
3 Summary Plan Description documents ("SPDs") and not the
4 ERISA Plan documents themselves. Id. ¶ 14. The SPD
5 for the Teamsters Plan contains the following clause in
6 a section titled "General Provisions": "Participants
7 are generally responsible for notifying the Fund of
8 changes in family circumstances. Benefits are not
9 assignable, although the Fund will honor qualified
10 medical child support orders." Id. ¶ 23.

11 2. Woodward and Williams Lea Plans

12 The Woodward, Inc. Plan ("Woodward Plan") provides
13 coverage for one patient identified as Patient M. Id.
14 ¶ 31; id., Ex. F. The Williams Lea Inc. Health Care
15 Plan ("Williams Lea Plan") provides coverage for one
16 patient identified as Patient K. Id. The SPDs for the
17 two Plans contain substantially similar or identical
18 language. Id. Each contain the following clause:

19 A Covered Persons' claim for benefits under this
20 Health Care Plan is expressly non-assignable and
21 non-transferable in whole or in part to any
22 person or entity, including any Provider, at
23 anytime before or after Covered Services are
24 rendered to a Covered Person . . . Any such
25 assignment or transfer of a claim for benefits
26 or coverage shall be null and void.

24 Declaration of Gayle Dissen ("Dissen Decl.") ¶ 5, ECF
25 No. 19-1; FAC ¶ 32. The SPDs for both also state that
26 benefit payments to a Non-Participating Provider will
27 be determined by a "policy fee schedule"; by the
28 provider's usual and customary charge; or by some

1 "other method" as defined by the Plan, but does not
2 state which of the three is to be used. FAC ¶ 36.

3 3. Patient E

4 Finally, Plaintiff has attached an Insurance
5 Verification telephone record for Patient E, which
6 identifies the employer of Patient E as UPS, Group
7 #077323. Id. ¶ 12. Plaintiff also attached a letter
8 from Blue Cross of California, confirming receipt of
9 Plaintiff's appeal for Patient E. Id. ¶ 13. However,
10 Plaintiff alleges that it has been unable to locate an
11 applicable ERISA Plan document for Patient E. Id. ¶
12 14.

13 **B. Procedural Background**

14 Plaintiff filed its Complaint [1] on May 9, 2018
15 for recovery of benefits under ERISA. Defendant filed
16 a Motion to Dismiss [13] on August 6, 2018. This Court
17 granted Defendant's Motion to Dismiss with leave to
18 amend [17] on November 8, 2018.² Plaintiff filed its
19 FAC [18] on November 29, 2018. Defendant filed the
20 instant Motion to Dismiss Plaintiff's FAC [19] on
21 December 13, 2018. Plaintiff timely opposed [24], and
22 Defendant timely replied [25].

23 ///

25 ² The Court found that Plaintiff did not adequately allege
26 standing to bring an ERISA claim on behalf of the patients, as 13
27 of the 14 patients' plans appeared to contain anti-assignment
28 provisions, and Plaintiff did not allege the terms of or identify
the remaining patient's plan (Patient E). See Order 13:26-14:11,
ECF No. 17. The Court also found that Defendant did not
adequately plead estoppel or waiver. Id.

II. DISCUSSION

A. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) allows a party to move for dismissal of one or more claims if the pleading fails to state a claim upon which relief can be granted. A complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)(quotation omitted). Dismissal is warranted for a "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988)(citation omitted).

In ruling on a 12(b)(6) motion, a court may generally consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice. Swartz v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007). A court must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the non-moving party. Klarfeld v. United States, 944 F.2d 583, 585 (9th Cir. 1991). The question is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to present evidence to support the claims. Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 184 (2005) (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). While a complaint

1 need not contain detailed factual allegations, a
2 plaintiff must provide more than "labels and
3 conclusions" or "a formulaic recitation of the elements
4 of a cause of action." Bell Atl. Corp. v. Twombly, 550
5 U.S. 544, 555 (2007). However, a complaint "should not
6 be dismissed under Rule 12(b)(6) 'unless it appears
7 beyond doubt that the plaintiff can prove no set of
8 facts in support of his claim which would entitle him
9 to relief.'" Balistreri, 901 F.2d at 699 (citing
10 Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

11 **B. Discussion**

12 1. Request for Judicial Notice

13 Plaintiff requests that the Court take judicial
14 notice of a recent decision by another court in this
15 district denying a motion to dismiss in a separate
16 action involving Plaintiff.³ Pl.'s Req. for Judicial
17 Notice ("RJN") 1:27-2:6, ECF No. 26. Because courts
18 "may take judicial notice of undisputed matters of
19 public record, including documents on file in federal
20

21 ³ See RJN, Ex. A, Beverly Oaks Physicians Surgical Ctr., LLC
22 v. California Physicians Servs., No. 18-cv-6407-RGK-RAO. There,
23 a district court denied the defendant's motion to dismiss finding
24 that the defendant waived its right to assert an anti-assignment
25 provision by paying some of Plaintiff's claims during the
26 administrative process, and because each billing form had a
27 checked box that informed defendant that Plaintiff was asserting
28 the claim as an assignee. The Court need not delve into
distinguishing this case as it is merely persuasive authority,
and as discussed later, several other courts, including the Ninth
Circuit, have found that direct payment is insufficient to
establish waiver. See, e.g., Brand Tarzana Surgical Inst., Inc.
v. Int'l Longshore & Warehouse Union-Pac. Mar. Ass'n Welfare
Plan, 706 F. App'x 442, 443 (9th Cir. 2017).

1 or state courts," the decision is appropriate for
2 judicial notice. Harris v. Cty. of Orange, 682 F.3d
3 1126, 1132 (9th Cir. 2012) (internal citation omitted).
4 Thus, the Court **GRANTS** Plaintiff's Request for Judicial
5 Notice.

6 2. The Motion

7 Defendant argues that Plaintiff has not cured the
8 deficiencies from the Court's prior Order, specifically
9 that Plaintiff does not plead facts sufficient to
10 overcome the purported anti-assignment provisions
11 ("AAPs") and instead offers new legal theories it
12 should have, but failed to raise, in response to
13 Defendant's initial Motion to Dismiss. Def.'s Reply
14 1:2-7, ECF No. 25. Plaintiff now argues that the AAPs
15 are invalid because (1) the Summary Plan Descriptions
16 ("SPDs") do not constitute Plan documents and are not
17 enforceable; and (2) the AAPs are ambiguous. Def.'s
18 Mem. 7:6-12, ECF No. 20.

19 As a preliminary matter, Defendant argues that
20 these new legal arguments are barred by the law of the
21 case doctrine. "Under the 'law of the case' doctrine,
22 a district court is 'precluded from reconsidering an
23 issue that has already been decided by the same court,
24 or a higher court in the identical case,' unless an
25 exception to depart from the law of the case exists."
26 Folex Golf Industries, Inc. v. O'TA Precision
27 Industries Co., Ltd., 700 Fed. App'x 738 (9th Cir.
28 2017) (citation omitted). However, "the law of the

1 case rule does not bind a court as absolutely as res
2 judicata, and should not be applied woodenly when doing
3 so would be inconsistent with considerations of
4 substantial justice." Moore v. James H. Matthews &
5 Co., 682 F.2d 830, 833-34 (9th Cir. 1982) (internal
6 quotation marks and citations omitted). "'For the
7 doctrine to apply, the issue in question must have been
8 decided explicitly or by necessary implication in [the]
9 previous disposition.'" In re Flashcom, Inc., 503 B.R.
10 99, 127 (C.D. Cal. 2013) (quoting United States v.
11 Jingles, 702 F.3d 494, 499 (9th Cir. 2012), cert.
12 denied, 133 S. Ct. 1650 (2013)). Nonetheless, "[a]ll
13 rulings of a trial court are 'subject to revision at
14 any time before the entry of judgment.'" United States
15 v. Houser, 804 F.2d 565, 567 (9th Cir. 1986) (citing
16 Fed. R. Civ. Proc. 54(b)).

17 In granting Defendant's first Motion to Dismiss,
18 the Court's finding that there is anti-assignment
19 language in the Teamsters, Woodward, and Williams Lea
20 SPDs was necessary to support the legal conclusion that
21 Plaintiff lacked standing. However, whether the SPDs
22 are enforceable and the AAPs are unambiguous was not at
23 issue in the initial Motion to Dismiss. The Court
24 merely made a preliminary statement that pursuant to
25 Ninth Circuit law, "[n]otwithstanding any plausible
26 allegations regarding standing, Plaintiff may lack
27 standing if the relevant plans at issue here contain
28 valid and unambiguous anti-assignment provisions."

1 Order at 6:4-7. The Court did not make an explicit
2 legal determination that the AAPs are valid and
3 unambiguous, and granted leave to amend for Plaintiff
4 to provide Plan terms that may plausibly assert
5 standing. Indeed, Plaintiff's original Complaint and
6 Opposition did not include any allegations regarding
7 the validity of the SPDs and AAPs. See Compl., ECF
8 No. 1. Now, the FAC includes allegations that the SPDs
9 are not Plan documents and that the AAPs are ambiguous.
10 See FAC ¶¶ 14, 19, 29-30, 32, 35. The prior Order
11 focused primarily on Plaintiff's arguments regarding
12 waiver and estoppel, and to avoid any injustice, the
13 Court will consider the merits of Plaintiff's new
14 arguments.

15 Thus, the Court finds that the law of the case
16 doctrine does not apply here because the enforceability
17 of the SPDs and validity of the AAPs was not previously
18 an issue fully argued and decided before the Court.⁴
19 The Court will consider the merits of Plaintiff's
20 arguments in turn below.

21
22 ⁴ Even if the law of the case doctrine did apply, this issue
23 would fit in the manifest injustice exception because the
24 arguments as to validity and ambiguity of the AAPs were not
25 briefed for the Court in the initial Motion to Dismiss. See
26 United States v. Cuddy, 147 F.3d 1111, 1114 (9th Cir. 1998)
27 (holding that the exceptions to the doctrine include: (1) the
28 first decision was clearly erroneous; (2) there has been an
intervening change in law; (3) the evidence before the court when
reconsidering the issue is substantially different; (4) there
are other changed circumstances; or (5) a manifest injustice
would result from applying the doctrine).

1 a. *Enforceability of the SPDs*

2 “To state a claim [for benefits under ERISA §
3 502(a)(1)(B)], plaintiff must allege facts that
4 establish the existence of an ERISA plan as well as the
5 provisions of the plan that entitle it to benefits. A
6 plan is established if a reasonable person ‘can
7 ascertain the intended benefits, a class of
8 beneficiaries, the source of financing, and procedures
9 for receiving benefits.’ Failure to identify the
10 controlling ERISA plans makes a complaint unclear and
11 ambiguous.” Forest Ambulatory Surgical Associates,
12 L.P. v. United HealthCare Ins. Co., No.
13 10-CV-04911-EJD, 2011 WL 2748724, at *5 (N.D. Cal. July
14 13, 2011) (citations omitted).

15 i. *Teamsters, Woodward, and Williams Lea*

16 Plaintiff does not allege the Plan terms that
17 entitle it to additional benefits for the Teamsters,
18 Woodward, or Williams Lea Plans. Defendant instead
19 provided the SPD for each along with its Motion. See
20 Dissen Decl., Exs. A-C, ECF No. 19-1.⁵ Plaintiff
21 alleges that the SPDs cannot be enforced as terms of
22 the ERISA Plans themselves, and thus any purported AAPs
23

24 ⁵ In its prior Order the Court held that it can consider the
25 attached SPDs by means of the incorporation by reference
26 doctrine, which “permits a district court to consider documents
27 ‘whose contents are alleged in a complaint and whose authenticity
28 [plaintiff's] pleadings.’” Branch v. Tunnell, 14 F.3d 449, 454
(9th Cir. 1994), *overruled on other grounds by* Galbraith v.
County of Santa Clara, 307 F.3d 1119 (9th Cir. 2002).

1 within the SPDs are invalid. FAC ¶ 14. The Supreme
2 Court has held that "summary documents, important as
3 they are, provide communication with beneficiaries
4 about the plan, but that their statements do not
5 themselves constitute the terms of the plan for
6 purposes of [ERISA] § 502(a)(1)(B)". CIGNA Corp. v.
7 Amara, 131 S. Ct. 1866 (2011). The Ninth Circuit has
8 since clarified that "Amara addressed only the
9 circumstance where both a governing plan document and
10 an SPD existed, and the plan administrator sought to
11 enforce the SPD's terms over those of the plan
12 document. It did not address the situation . . . that
13 a plan administrator seeks to enforce the SPD as the
14 one and only formal plan document." Prichard v. Metro.
15 Life Ins. Co., 783 F.3d 1166, 1170 (9th Cir. 2015).
16 Accordingly, "an SPD may constitute a formal plan
17 document, consistent with Amara, so long as the SPD
18 neither adds to nor contradicts the terms of existing
19 Plan documents." Mull for Mull v. Motion Picture
20 Industry Health Plan, 865 F.3d 1207, 1210 (9th Cir.
21 2017) (quoting Prichard, 783 F.3d at 1170).

22 Here, Plaintiff alleges that the Teamsters Plan was
23 not available to it prior to performing services for
24 the Teamsters patients. FAC ¶ 14. Plaintiff does not
25 allege any attempt to locate the Woodward and Williams
26 Lea Plans. Rather, Plaintiff argues that the SPDs may
27 contradict unknown Plan documents that will "likely
28 later be available." Pl.'s Opp'n 13:5-10, ECF No. 24.

1 Plaintiff's mere hypothesis that the SPDs may
2 contradict some unknown Plan documents with no
3 indication as to its efforts to obtain the Plans or how
4 it will obtain them in the future is insufficient. See
5 Forest Ambulatory Surgical Assocs., L.P. v. United
6 HealthCare Ins. Co., No. 10-CV-04911-EJD, 2011 WL
7 2748724, at *5 (N.D. Cal. July 13, 2011) ("Failure to
8 identify the controlling ERISA plans makes a complaint
9 unclear and ambiguous."). Moreover, the SPDs are the
10 only Plan documents Plaintiff can point to in arguing
11 it is entitled to additional benefits. It is illogical
12 for Plaintiff to argue that the SPDs are not
13 enforceable as Plan terms and simultaneously seek to
14 rely on the SPDs to recover benefits.⁶

15 Plaintiff also argues that the SPDs cannot be
16 enforced because they are ambiguous as to payment
17 computation. The Woodward and Williams Lea SPDs both
18 provide that "[b]enefits for services rendered by a
19 Non-Administrator Ambulatory Surgical Facility will be
20 provided at 40% of the Eligible Charge." Dissen Decl.,
21 Ex. B at 65; id., Ex. C at 68. The "Eligible Charge"
22 for non-contracting providers is the lesser of the
23 provider's billed charges, or the non-contracting

25 ⁶ The Court notes that Plaintiff's argument is inconsistent
26 with Plaintiff's prior position in opposition to Defendant's
27 first Motion to Dismiss, in which Plaintiff referred to the SPDs
28 and acknowledged that "there is no need for [P]laintiff's
Complaint to be amended to identify ERISA Plans that have already
been identified." Order at 8:2-8.

1 eligible charge which is "developed from base Medicare
2 reimbursements and represents approximately 300% of the
3 base Medicare reimbursement rate" ⁷ Dissen
4 Decl., Ex. B at 19; id., Ex. C at 21. The parties
5 dispute whether the Medicare reimbursement rates exist,
6 and as a result, whether the "Eligible Charge" should
7 be 40% or 300% of the Medicare rates.

8 The Teamsters SPD states that when a Medicare
9 reimbursement rate is not available, the "Eligible
10 Charge" for non-participating providers shall be 50% of
11 the standard billed charge. Opp'n at 19:8-12. The
12 Teamsters SPD provides that the "allowed charge" for a
13 non-network provider like Plaintiff "means the schedule
14 that lists the dollar amounts the Plan has determined
15 it will allow for eligible medically necessary services
16 or supplies performed by non-network providers."
17 Dissen Decl., Ex. A at 30. Plaintiff alleges that no
18 such "Plan list" is provided with the SPD, and thus it
19 is ambiguous. FAC ¶ 29.

20 While the parties dispute how these payment
21 computation provisions should be interpreted, at this
22 stage Plaintiff has alleged sufficient facts
23 identifying the terms in the Teamsters, Woodward, and
24 Williams Lea SPDs that plausibly may confer payments of
25 benefits that do not render the SPDs ambiguous. See

27 ⁷ Plaintiff alleges that the Teamsters SPD also includes the
28 same provisions, FAC ¶ 30, however no such provision exists in
the Teamsters SPD.

1 Salinas Valley Memorial Healthcare Sys. v. Monterey
2 Peninsula Horticulture, Inc., No. 17-cv-07076-VKD, 2018
3 WL 6268878, at * 5-6 (N.D. Cal. Nov. 29, 2018) (finding
4 that despite the parties dispute over Plan
5 interpretation, for pleading purposes the plaintiff had
6 "alleged sufficient facts identifying Plan terms that
7 plausibly may confer payment of benefits of more than
8 140% of Medicare"); Downey Surgical Clinic, Inc. v.
9 Ingenix, Inc., No. CV 09-5457 PSG (CTx), 2013 WL
10 12114069, at *5 (C.D. Cal. Mar. 12, 2013) (finding
11 sufficient allegation that plans will pay for out-of-
12 network services in an amount lower of either the
13 provider's actual billed charge or the usual,
14 customary, and reasonable amount).

15 In sum, courts routinely look to SPDs to determine
16 assignability of benefits and have enforced AAPs within
17 SPDs to bar claims. See, e.g., Spinedex Physical
18 Therapy USA Inc. v. United Healthcare of Arizona, Inc.,
19 770 F.3d 1282, 1296 (9th Cir. 2014) (affirming
20 determination that plaintiff lacked standing due to
21 anti-assignment provisions in SPDs); Care First
22 Surgical Ctr. v. ILWU-PMA Welfare Plan, No. CV 14-01480
23 MMM (AGRx), 2014 WL 12573014, at *10 (C.D. Cal. Dec.
24 26, 2014) (dismissing ERISA claim for lack of statutory
25 standing where SPD contained anti-assignment
26 provision). Because there are no Plan documents before
27 the Court other than the SPDs, the Court finds that the
28 Teamsters, Woodward, and Williams Lea SPDs are

1 unambiguous and enforceable as Plan terms.

2 ii. *Patient E*

3 Patient E's Plan was previously unaccounted for in
4 Plaintiff's initial Complaint. See Order at 8.

5 Plaintiff alleges that it "has attempted to locate" the
6 applicable ERISA Plan documents for Patient E through
7 publicly available sources, but has been unsuccessful.

8 FAC ¶ 14. The FAC now includes an Insurance
9 Verification telephone record document showing Patient
10 E's employer as UPS, Group #077323, and an allegation
11 that ERISA Plan documents for an employer like UPS are
12 not typically available to a medical services provider.
13 FAC ¶¶ 12, 14; id., Ex. B. Also attached to the FAC is
14 a letter from Blue Cross of California, confirming
15 receipt of Plaintiff's appeal for Patient E. See FAC ¶
16 13; id., Ex. C, Blue Cross Letter, ECF No. 18-3.

17 Plaintiff argues that this letter and the Insurance
18 Verification telephone record are sufficient to allege
19 Patient E's Plan terms because the Insurance
20 Verification states that "out of network coverage for a
21 non-contracted Ambulatory Surgical Center" is 80% after
22 deductible met and the letter states that "[a]s a non-
23 contracted provider, the allowance assigned to this
24 claim was based on the reasonable and customary rates
25 for the area in which services were rendered." See id.
26 ¶¶ 12-13; id., Exs. B-C.

27 These two sentences are insufficient on their own
28 because they only convey the rates at which Plaintiff

1 could be paid, but does not establish any specific
2 terms of Patient E's ERISA Plan that assign Patient E's
3 benefits to Plaintiff. See Spinedex, 770 F.3d at 1289
4 ("As a non-participant health care provider, Spinedex
5 cannot bring claims for benefits on its own behalf. It
6 must do so derivatively, relying on its patients'
7 assignments of their benefits claims.").
8 Consequently, the Court **GRANTS** Defendant's Motion as to
9 Patient E's claims.

10 b. *Validity of the AAPs*

11 Plaintiff alternatively argues that should the
12 Court enforce the SPDs, the purported AAPs are
13 contradictory and ambiguous, and thus cannot be
14 enforced. A plaintiff lacks standing if the relevant
15 ERISA plan contains a valid and unambiguous AAP. See
16 Spinedex, 770 F.3d at 1296 (affirming district court's
17 holding that an anti-assignment provision prevented
18 patients from assigning claims); Davidowitz v. Delta
19 Dental Plan of Cal., Inc., 946 F.2d 1476, 1477 (9th
20 Cir. 1991) ("ERISA welfare plan payments are not
21 assignable in the face of an express non-assignment
22 clause in the plan.").

23 i. *Woodward and Williams Lea AAPs*

24 The Woodward and Williams Lea SPDs contain
25 identical provisions under a section titled "Payment of
26 Claims and Assignment of Benefits," stating that "[a]
27 Covered Person's claim for benefits under this Health
28 Care Plan is expressly non-assignable and non-

1 transferable in whole or in part to any person or
2 entity, including any Provider, at anytime before or
3 after Covered Services are rendered to a Covered
4 person." Dissen Decl., Ex. B, Williams Lea SPD, 106
5 ¶2(c); id., Ex. C, Woodward SPD, 109 ¶2(c).

6 Plaintiff does not dispute that this language is an
7 AAP, but argues that there is "direct payment" language
8 in both SPDs that contradict the anti-assignment
9 language, stating that "[b]enefit payment will usually
10 be sent directly to the Hospital or Physician." FAC ¶
11 32. As the Court previously found, direct payments to
12 the Provider do not afford the Provider "beneficiary"
13 status under ERISA. See DB Healthcare, LLC v. Blue
14 Cross Blue Shield of Arizona, Inc., 852 F.3d 868, 875
15 (9th Cir. 2017) ("Neither a designation in a health
16 benefit plan nor an assignment by a patient allowing a
17 health care provider to receive direct payment for
18 health services entitles a health care provider to
19 "benefits" on its own behalf.").⁸ The Court finds that
20 in the absence of any contradicting Plan terms, the
21 Woodward and Williams Lea SPDs contain express AAPs
22 that are both are valid and unambiguous, and the Court
23

24 ⁸ Plaintiff brings this same "direct payment" argument with
25 respect to the Teamsters SPD by pointing to its provision that "if a
26 post-service claim is approved, the patient will be notified in
27 writing on an Explanation of Benefits form ("EOB") and the provider of
28 the medical service will be paid according to Plan benefits." Opp'n
at 14:12-28. For the same reasons as the Woodward and Williams Lea
SPDs, this provision also does not render any purported Teamsters' AAP
ambiguous or contradictory.

1 **GRANTS** Defendant's Motion to Dismiss Plaintiff's claims
2 for Patients K and M.

3 ii. *Teamsters AAP*

4 The parties dispute the application of a clause in
5 the Teamsters SPD's General Provisions, which states:
6 "Participants are generally responsible for notifying
7 the Fund of changes in family circumstances. Benefits
8 are not assignable, although the Fund will honor
9 qualified medical child support orders." FAC ¶ 23;
10 Dissen Decl. Ex. A at 45. Defendant argues that this
11 is a valid AAP. Plaintiff argues that this clause only
12 refers to the narrow family circumstance exception, and
13 it is ambiguous because the preceding paragraph states
14 that "[f]or a full understanding of these provisions,
15 you should review Article X of the Rules and
16 Regulations." Ex. A at 45. The clause is not as
17 explicit as the anti-assignment language seen in the
18 Woodward and Williams Lea SPDs and it appears in its
19 own paragraph, sandwiched in between two sentences
20 discussing family circumstances. While it is plausible
21 that the clause does not apply in the broad sense that
22 Defendant argues, because it is listed under the
23 "General Provisions" section the Court interprets its
24 plain language to mean that generally, benefits are not
25 assignable with the exception for "qualified medical
26 child support orders."

27 Plaintiff argues the clause is contradicted by
28 another SPD provision, which states that the Plan's

1 "financial responsibility for eligible benefits is
2 generally automatically assigned to the provider." See
3 Ex. A at 60, ¶3. Plaintiff conveniently does not
4 include the remainder of this paragraph, which states
5 that "the fact that the Plan may pay benefits directly
6 to a provider does not give such provider 'Beneficiary'
7 status under ERISA." Id. Thus, this provision only
8 addresses to whom payments are sent, and is consistent
9 with the anti-assignment language.

10 Plaintiff further argues that even if the Teamsters
11 SPD contains a valid AAP, Defendant is duty bound to
12 the instruction set forth in the Financial
13 Responsibility Agreement that Plaintiff has its
14 patients sign, which states: "This a direct assignment
15 of my rights and benefits under my insurance plan or
16 policy" FAC, Ex. D. But this represents an
17 agreement between Plaintiff and its patients, and does
18 not reflect terms of the ERISA Plan. While this
19 agreement does demonstrate the patients' willingness to
20 assign benefits, the "governing employee benefit plans
21 contain non-assignment clauses that override any
22 purported assignments."⁹ DB Healthcare, 852 F.3d at
23 876.

24 ///

26
27 ⁹ Plaintiff makes the same argument that Defendant is also
28 duty bound under this Financial Responsibility for the Woodward
and Williams Lea Plans, FAC ¶ 33, but Plaintiff's argument fails
for the same reason.

1 c. *Waiver and Estoppel*

2 Plaintiff does not allege any new facts sufficient
3 to establish waiver or estoppel. Plaintiff instead
4 repeats its argument from its prior Opposition that,
5 following Spinedex Physical Therapy USA, Inc. v. United
6 Healthcare of Arizona, Inc., 770 F.3d 1282 (9th Cir.
7 2014), an anti-assignment clause is subject to waiver
8 and estoppel where, as here, the defendant does not
9 assert the clause during the administrative review
10 process. Opp'n at 22:9-12. While Spinedex does hold
11 that as a general rule, "a court will not allow an
12 ERISA plan administrator to assert a reason for denial
13 of benefits that it had not given during the
14 administrative process," the Court previously explained
15 in its initial Order that the Ninth Circuit has since
16 clarified that when raising an AAP to contest standing,
17 it is not waived for failure to raise it during the
18 claim administration process. See Order at 11:27-12:17
19 (citing Brand Tarzana, 706 F. App'x at 443 (finding no
20 need to raise the AAP during the claim administration
21 process because it is a "litigation defense, not a
22 substantive basis for claim denial")). Because
23 Defendant raises the AAPs as a litigation defense,
24 Plaintiff's reliance on Spinedex is misplaced.¹⁰

26 ¹⁰ The only other case Plaintiff relies on is a Fifth
27 Circuit decision, Memorial Hospital System v. Northbrook Life
28 Ins. Co., 904 F.2d 236 (5th Cir. 1990), which bears no authority
on this case.

1 Plaintiff's only other argument for waiver and
2 estoppel again reasserts that Defendant was notified in
3 Plaintiff's initial billing form that Plaintiff was
4 asserting its claim as an assignee. Opp'n at 23:3-15.
5 The Court already addressed this argument and found
6 that "direct communications and payment are
7 insufficient evidence of a clear and convincing waiver
8 of the non-assignment provision." See Order at 12:18-
9 13:25 (quoting Pac. Shores Hosp. v. Backus Hosp. Med.
10 Benefit Plan, No. CV 04-7935 ABC (PLAx), 2005 WL
11 8154685, at *3 (C.D. Cal. May 18, 2005)). Because
12 Plaintiff cannot adequately plead waiver or estoppel,
13 the Teamsters, Woodward, and Williams Lea AAPs are
14 enforceable and Plaintiff lacks standing to state a
15 claim under ERISA.

16 d. *Leave to Amend*

17 Rule 15(a) provides that a party may amend their
18 complaint once "as a matter of course" before a
19 responsive pleading is served. Fed. R. Civ. P. 15(a).
20 After that, the "party may amend the party's pleading
21 only by leave of court or by written consent of the
22 adverse party and leave shall be freely given when
23 justice so requires." Id. But if any amendment to the
24 pleadings would be futile, leave to amend should not be
25 granted. See Thinket Ink Info. Res., Inc. v. Sun
26 Microsystems, Inc., 368 F.3d 1053, 1061 (9th Cir. 2004)
27 (quoting Saul v. United States, 928 F.2d 829, 843 (9th
28 Cir. 1991)).

1 Defendant filed a Motion to Dismiss Plaintiff's
2 initial Complaint, which the Court granted with leave
3 to amend. As to Patient E, the Court was clear in its
4 Order that Plaintiff needed to allege the terms of
5 Patient E's ERISA Plan entitling it to benefits, but
6 Plaintiff still did not cure this deficiency. Because
7 Plaintiff alleges that ERISA Plan documents for an
8 employer like UPS are not typically available, leave to
9 amend would likely be futile and the Court **DENIES LEAVE**
10 **TO AMEND** as to Plaintiff's claim for Patient E. Ferdik
11 v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992)
12 (noting a district court's discretion to deny leave to
13 amend is particularly broad where it has afforded the
14 plaintiff one or more opportunities to amend).

15 As to the Woodward and Williams Lea Plans,
16 Plaintiff does not allege that there are Plan terms it
17 has not been able to locate that would contradict the
18 SPDs' anti-assignment language. Because the Court
19 rejects Plaintiff's allegations that other SPD
20 provisions contradict the AAPs, any amendment would
21 likely be futile and the Court **DENIES LEAVE TO AMEND** as
22 to Plaintiff's claims for Patients K and M. However,
23 unlike the Woodward and Williams Lea AAP, Plaintiff
24 argues that the Teamsters' clause at issue is not an
25 AAP. While Plaintiff still has not provided any
26 Teamsters Plan terms other than the SPD, the Court is
27 hesitant at this stage to definitively hold that the
28 Teamsters AAP is valid and unambiguous because it is at

1 least plausible that the "Rules and Regulations" of the
2 Plan, which the SPD references, elaborate on whether
3 the clause applies generally or only to the family
4 circumstance exception. Because Plaintiff argues it is
5 likely able to obtain the Teamsters Plan, Plaintiff
6 will be allowed one final amendment.¹¹ As such, the
7 Court **GRANTS** Defendant's Motion to Dismiss Plaintiff's
8 claims under the Teamsters Plan **WITH LEAVE TO AMEND**.

9 **III. CONCLUSION**

10 Based on the foregoing, the Court: (1) **GRANTS**
11 Defendant's Motion **WITHOUT LEAVE TO AMEND** as to
12 Plaintiff's claims for Patient E, and Patients K and M
13 under the Woodward and Williams Lea Plans; and (2)
14 **GRANTS** Defendant's Motion **WITH LEAVE TO AMEND** as to
15 Plaintiff's claims under the Teamsters Plan. Plaintiff
16 shall have **21 days** from this date to file a Second
17 Amended Complaint.

18
19 **IT IS SO ORDERED.**

20
21 DATED: February 27, 2019

s/ RONALD S.W. LEW

22 **HONORABLE RONALD S.W. LEW**
23 Senior U.S. District Judge
24
25

26 ¹¹ As Defendant points out, both ERISA and the SPDs provide
27 a mechanism for an authorized representative of the patients to
28 obtain Plan documents, and the patients themselves either possess
the documents or have access to them pursuant to 29 U.S.C. §
1024(b)(4).